

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1923

No. 4057.

49

DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

SUE H. GARDNER.

**IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.**

FILED OCTOBER 20, 1923.

PRINTED DECEMBER 11, 1923.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1923

No. 4057.

DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

SUE H. GARDNER, DEFENDANT IN ERROR.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 4057.

DISTRICT OF COLUMBIA, Plaintiff in Error,

vs.

SUE H. GARDNER.

1 Municipal Court of the District of Columbia.

At Law.

No. 87788.

SUE H. GARDNER, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remember-, That in the Municipal Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

2 *Declaration.*

Filed January 31, 1923.

In the Municipal Court of the District of Columbia.

At Law.

No. 87788.

SUE H. GARDNER, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

The plaintiff, Sue H. Gardner, sues the defendant, the District of Columbia, for money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant; and for

work done and materials provided by the plaintiff for the defendant at its request; and for money lent by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant at its request; and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them. And the plaintiff claims \$419.00, with interest on \$79.00 from June 30, 1919, and interest on \$21.00 from November 3, 1919, and interest on \$79.00 from June 30, 1920, and interest on \$100.00 from June 30, 1921, and interest on \$100.00 from June 30, 1922, and interest on \$40.00 from December 30, 1922, according to the particulars of demand hereto annexed.

PAUL E. LESH,
WILSON, HUIDEKOPER & LESH,
Attorneys for Plaintiff.

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Particulars of Demand.

Filed January 31st, 1923.

* * * * *
Balances of Salary Claimed as Teacher in the Public Schools of the District of Columbia of the Salary Class Known as Class Six, Group A, as Said Salaries are Classified in the Act of Congress Approved June 20, 1906, at the Rates Fixed by Law, Less the Amounts Paid.

Period.	Proper rate.	Amount.	Rate paid.	Amount.	Claim.
Nov. 4, '18...	Basic	\$1,000	\$1,000		
June 30, '19...	Placement ...	100			
	Bonus	120	120		
		<u>\$1,220</u>	<u>\$1,120</u>	<u>\$884.80</u>	<u>\$79.00</u>
July 1, '19...	Basic	\$1,060	\$1,060		
Nov. 3, '19...	Placement ...	100			
	Bonus	240	240		
		<u>\$1,400</u>	<u>\$1,380</u>	<u>273.00</u>	<u>21.00</u>
Nov. 4, '19...	Basic	\$1,060	\$1,060		
June 30, '20...	Placement ...	200	100		
	Bonus	240	240		
		<u>\$1,500</u>	<u>\$1,400</u>	<u>1,106.00</u>	<u>79.00</u>
July 1, '20...	Basic	\$1,440	\$1,440		
June 30, '21...	Placement ...	300	200		
	Bonus	240	240		
		<u>\$1,980</u>	<u>\$1,880</u>	<u>1,880.00</u>	<u>100.00</u>
July 1, '21...	Basic	\$1,440	\$1,440		
June 30, '22...	Placement ...	400	300		
	Bonus	240	240		
		<u>\$2,080</u>	<u>\$1,980</u>	<u>1,980.00</u>	<u>100.00</u>
July 1, '22...	Basic	\$1,440	\$1,440		
Dec. 30, '22...	Placement ...	500	400		
	Bonus	240	240		
		<u>\$2,180</u>	<u>\$2,080</u>	<u>832.00</u>	<u>40.00</u>
Totals		<u>\$7,374.80</u>		<u>\$6,955.80</u>	<u>\$419.00</u>

Total claimed is \$419.00.

With interest on \$79.00 from June 30, 1919.

"	"	"	21.00	"	Nov. 3, 1919.
"	"	"	79.00	"	June 30, 1920.
"	"	"	100.00	"	June 30, 1921.
"	"	"	100.00	"	June 30, 1922.
"	"	"	40.00	"	Dec. 30, 1922.

PAUL E. LESH,
WILSON, HUIDEKOPER & LESH,
Attorneys for Plaintiff.

4

Affidavit of Merit.

[Filed January 31, 1923.]

* * * * *

DISTRICT OF COLUMBIA, ss:

Sue H. Gardner, being first duly sworn, deposes and says that she is the plaintiff in the above-entitled case; that she has a good cause of action against the defendant, the District of Columbia, to recover the sum of Four Hundred and Nineteen Dollars, (\$419), with interest as hereinafter claimed, upon the following grounds:

That she is now and has been at all of the times hereinafter mentioned continuously a teacher in the public schools of the District of Columbia; that on the 3rd day of November, 1918, and prior thereto she was and had been a teacher in the Open Air School at the Blake School, and had been regularly appointed and serving as such and assigned to the salary class known as Class 4 as the salaries of teachers are classified in the Act of Congress entitled "An Act to fix and regulate the salaries of teachers," etc., approved June 20, 1906, and amendments thereto, and was therefore receiving an annual salary payable in ten monthly instalments in the sum of \$1,010, being a basic salary of \$800 plus seven annual increases of \$30 each within her salary class; that prior to the 4th day of November, 1918, she had regularly qualified for promotion to the position of teacher in the high schools, and on said 4th day of November, 1918, she was promoted from the said Salary Class 4 to the Salary Class 6, Group A, as a teacher in the high schools and assigned as a teacher of English in the Western High School, and on and after said 4th day of November, 1918, continuously to the present

5 day she has performed satisfactorily the duties of the position to which she was thus promoted; that she is advised and claims that upon her promotion to the higher salary class she was entitled under the aforesaid act to receive the salary in the said higher class next above the salary she had theretofore been receiving, and thereafter to receive an annual increase within said higher class and group; that the salary of the said Class 6, Group A, next above the salary which she had been receiving in Class 4 was fixed by the said act in the sum of \$1,100 annually, and the annual increase within said Class 6, Group A, was fixed by the said act at \$100; that, nevertheless, her salary for the period from November 4, 1918, to

June 30, 1919, was paid by the District of Columbia at the rate of \$1,000, the basic salary of the said Class 6, Group A, and the annual increases thereafter paid to her in the sum of \$100 each year were added to the said rate of \$1,000 instead of to her proper initial rate of \$1,100.

That for the purpose of accuracy the plaintiff here states the fact which she is advised is not material to the question involved in this case, viz: that during the period from July 1, 1918, to June 30, 1919, by reason of Acts of Congress applicable to the civil employees of the Government generally, increased compensation known as "bonus," at the rate of \$120 per annum was directed to be paid to employees, including the plaintiff, and the plaintiff received the said additional compensation without diminution, and the loss of salary herein complained of is with respect only to her basic and longevity salary as fixed by the said Act of June 20, 1906, and the amendments thereto; and the plaintiff by similar legislation became entitled to and was paid additional compensation known as "bonus," at the rate of \$240 per year for the year ending June 30, 1920, the year ending June 30, 1921, and the year ending June 30, 1922, and has received such "bonus" during the current year.

6 That for the period from November 4, 1918, to June 30, 1919, the plaintiff, paid as aforesaid at the rate, including "bonus," of \$1,120 per year, received the sum of \$884.80, instead of the sum of \$963.80, to which she was entitled as aforesaid at the rate, including "bonus," at \$1,220 per annum.

That for the period from July 1, 1919, to November 3, 1919, the plaintiff, paid as aforesaid at the rate, including "bonus," of \$1,380, the basic rate of compensation having been increased to \$1,060, received the sum of \$273 instead of the sum of \$294, to which she was entitled as aforesaid at the rate, including "bonus," of \$1,400.

That for the period from November 4, 1919, to June 30, 1920, the plaintiff's work having been satisfactory, she became entitled by reason of the provisions of the said Act of June 20, 1906, to receive her compensation at an annual rate increased by \$100 by reason of the provision for annual increases contained in the said act, making her total proper annual salary as a teacher the sum of \$1,260, plus the aforesaid "bonus" of \$240, a total annual rate of \$1,500, and the plaintiff was entitled for the said period to the sum of \$1,185, yet the plaintiff was paid at the annual rate, including "bonus," of \$1,400, and for the said period the sum of \$1,106.

That for the period from July 1, 1920, to June 30, 1921, the plaintiff was entitled as aforesaid to a salary as teacher increased to the sum of \$1,740, the basic salary having been increased to the sum of \$1,440, plus the so-called "bonus" in the sum of \$240, a total of \$1,980, yet the plaintiff was paid only the sum including "bonus," of \$1,880.

That for the period from July 1, 1921, to June 30, 1922, the plaintiff was entitled as aforesaid to a salary as teacher increased to the sum of \$1,840, plus the so-called "bonus" in the sum of \$240, a total of \$2,080, yet the plaintiff was paid only the sum, including "bonus," of \$1,980.

7 That for the period from July 1, 1922, to December 31, 1922, the plaintiff was entitled as aforesaid to a salary as teacher at an annual rate increased to the sum of \$1,940, plus the so-called "bonus" in the sum of \$240, a total annual rate of \$2,180, and for the said period of four teaching months she was entitled to the sum of \$872, yet the plaintiff was paid at the annual rate, including "bonus," of \$2,080, and for the said period the sum of \$832.

The plaintiff has from time to time made demand for the payment of said deficiencies in salary, and the said demands have been refused.

Wherefore, the plaintiff claims that there is due to her the total sum of \$419, with interest on \$79 from June 30, 1919; on \$21 from November 3, 1919; on \$79 from June 30, 1920; on \$100 from June 30, 1921; on \$100 from June 30, 1922; and on \$40 from December 31, 1922, until paid, exclusive of all set-offs and just grounds of defense, as more particularly appears from the particulars of demand filed with this affidavit.

SUE H. GARDNER.

Subscribed and sworn to before me this 31st day of January, A. D., 1923.

[Notarial Seal.]

R. S. HARRINGTON,
Notary Public, D. C.

8 *Plea.*

Filed February 23, 1923.

* * * * *

Now comes the defendant, the District of Columbia, and for a plea to the declaration herein filed, says that it is not indebted in manner and form as alleged in said declaration.

That it never promised in manner and form as alleged in said declaration.

F. H. STEPHENS,
R. L. WILLIAMS,
Attorneys for Defendant.

9 *Affidavit of Defense under Rule Sixteen.*

Filed June 22, 1923.

* * * * *

DISTRICT OF COLUMBIA, ss:

Daniel J. Donovan, being first duly sworn according to law, deposes and says that he is the Auditor of the District of Columbia, named as defendant in the above entitled cause, and makes this affidavit as the agent of the defendant upon his personal knowledge as to the matters and things herein set forth.

He admits the allegations contained in the affidavit of merit herein so far as the same sets forth the classification and group of the plain-

tiff herein as a teacher in the public school system of the District of Columbia, and he also admits that the plaintiff herein, was on the date mentioned in the affidavit of merit appointed a teacher in the high schools of the District of Columbia and served under said appointment for the time, in the school, and in the class and group set forth by her in her affidavit of merit.

Affiant further admits that the allegations of the affidavit of merit as to the salary paid plaintiff herein for services rendered by her as aforesaid were as in said affidavit of merit and particulars of demand set forth for the periods of time mentioned in said affidavit of merit and particulars of demand, and affiant is advised by counsel that said amounts so paid were in full of all claims and demands of said plaintiff against the District of Columbia for services rendered by her as alleged for that under and by virtue of the provisions of law in such case made and provided (section 6 of the Act of Congress approved June 20, 1906, commonly known as the "Organic Law") plaintiff herein was not entitled to and therefore did not receive any placement or longevity increment of salary by reason of the fact that prior to her appointment as a high school teacher she had been, and was at the time of her appointment, a teacher in the graded schools of the District of Columbia and was not and is not now entitled by virtue of any provision of law to any placement or longevity increment of salary based upon or arising out of services rendered to the defendant by the plaintiff as a teacher in said graded schools of the District of Columbia, or based upon or arising out of her teaching experience in said graded schools of the District of Columbia.

DANIEL J. DONOVAN.

Subscribed and sworn to before me this twenty-first day of June, A. D., 1923.

JOSEPH C. MCGARRAGHY,
Notary Public, D. C.

11 *Stipulation.*

Filed July 13, 1923.

* * * * *

It is stipulated and agreed for the purpose of all hearings in this cause that the action taken by the Board of Education with regard to the plaintiff, effective November 4, 1918, was, as shown by the minutes of the meeting of the Board of Education of November 6, 1918, as follows:

"Promote S. H. Gardner, teacher class 4, ungraded at Blake School, to be teacher class 6-a, Western High School, November 4."

PAUL E. LESH,
Attorney for Plaintiff.
F. H. STEPHENS,
ROBT. S. WILLIAMS,
Attorneys for Defendant.

Finding.

July 13, 1923.—Come now the parties hereto and thereupon this cause being heard and submitted, the court finds in favor of the plaintiff in the sum of four hundred and nineteen dollars, (\$419.) Whereupon defendant notes an exception.

Judgment.

July 20, 1923.—It appearing under Rule of Court that judgment on the finding in this cause should be entered it is so ordered. Wherefore, it is considered that plaintiff recover of defendant the sum of four hundred and nineteen dollars, (\$419.), with interest on \$79.00 from June 30, 1919, on \$21.00 from November 3, 1919, on \$79.00 from June 30, 1920, on \$100 from June 30, 1921, on \$100 from June 30, 1922, and on \$40 from December 30, 1922, and costs.

12

Memoranda.

September 4, 1923.—Time for submitting the bill of exceptions extended to and including October 1, 1923.

September 29, 1923.—Bill of exceptions submitted, signed and ordered of record nunc pro tunc.

13

Assignment of Error.

Filed September 29, 1923.

* * * * *

1. The Court erred in finding for the plaintiff by holding that the defendant's affidavit of defense was insufficient and that the facts shown to the Court by the affidavits and stipulation entitled the plaintiff to judgment.

F. H. STEPHENS,
R. L. WILLIAMS,
Attorneys for Defendant.

14

Designation of Record.

Filed October 3, 1923.

* * * * *

The clerk of the Court will please prepare transcript of record on writ of error in the above entitled cause as follows:

1. Declaration, Particulars of Demand, and Affidavit of merit under Rule Sixteen.
2. Pleas of Defendant.
3. Affidavit of defense under Rule Sixteen.

4. Stipulation, filed July 13, 1923.
5. The finding for plaintiff.
6. Notation of intention to apply to the Court of Appeals for the Writ of Error.
7. The judgment on finding for plaintiff.
8. Writ of Error.
9. Memorandum of extension of time to submit bill of exceptions.
10. Memorandum of settling of bill of exceptions.
11. Assignment of Error.
12. This designation.

F. H. STEPHENS,
R. L. WILLIAMS,
Attorneys for Defendant.

Approved:

PAUL E. LESH,
Attorney for Plaintiff.

15 Filed Sep. 29, 1923. Municipal Court, District of Columbia.

In the Municipal Court of the District of Columbia.

At Law.

No. 87788.

SUE H. GARDNER, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

Bill of Exceptions.

Be it remembered, that the above entitled cause came on for hearing before the Honorable Charles V. Meehan on the declaration, particulars of demand and affidavit of merit under Rule Sixteen, the pleas and affidavit of defense under Rule Sixteen, and the stipulation, and was heard as upon a motion for judgment under Rule Sixteen, the facts shown by said stipulation being by consent considered, and the Court, being of opinion that the affidavit of defense was insufficient and that the facts shown to the Court by the affidavits and stipulation entitled the plaintiff thereto, granted the motion for judgment for the plaintiff for the amount claimed with interest and costs; whereupon the said defendant reserved an exception to the rulings of the Court and gave notice of an intention to apply to the Court of Appeals of the District of Columbia for the Writ of Error to review the proceedings, all and singular, in the above entitled cause.

In order that the defendant may have its case reviewed on writ of error by the proper court, the defendant, by its attorney, moves the Court to sign this, its bill of exceptions, which motion is, by

the Court, granted; and thereupon the defendant tenders this, its bill of exceptions, and requests the Court to sign and seal the same according to the statute in such cases made and provided, and it is accordingly done, nunc pro tunc.

Witness my hand and seal this 29th day of September A. D., 1923.

CHARLES V. MEEHAN,
Judge.

Form satisfactory:
PAUL E. LESH,
Atty. Plaintiff.

16 Municipal Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Blanche Neff, Clerk of the Municipal Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 15, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause, At Law, No. 87788, wherein Sue H. Gardner is plaintiff and the District of Columbia is defendant, as the same that remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of October, 1923.

[Seal of the Municipal Court of the District of Columbia.]

BLANCHE NEFF,
Clerk.

17 Filed Aug. 13, 1923. Municipal Court, District of Columbia.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable Charles V. Meehan, Judge of the Municipal Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Municipal Court, before you, between Sue H. Gardner, plaintiff, and District of Columbia, defendant, No. 87,788, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 20 days from the settling of the bill of exceptions, or within such additional time after the expiration of the 20 days as the court below or a judge thereof for sufficient cause shall allow; that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Constantine J. Smyth, Chief Justice of the said Court of Appeals the 13th day of August, in the year of our Lord one thousand nine hundred and twenty three.

[Seal of the Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

Allowed by

JOSIAH A. VAN ORSDEL,
*Associate Justice of the Court of
Appeals of the District of Columbia.*

[Endorsed:] Filed Aug. 13, 1923. Municipal Court, District of Columbia.

Endorsed on cover: District of Columbia Municipal Court. No. 4057. District of Columbia, plaintiff in error, vs. Sue H. Gardner. Court of Appeals, District of Columbia. Filed Oct. 20, 1923. Henry W. Hodges, clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

JAN 11 1924

Henry H. Hodges

CLERK

Court of Appeals, District of Columbia.

JANUARY TERM, 1924.

No. 4057.

DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

SUE H. GARDNER, DEFENDANT IN ERROR.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.

BRIEF OF THE PLAINTIFF IN ERROR.

F. H. STEPHENS,
R. L. WILLIAMS,
Attorneys for Plaintiff in Error.

Court of Appeals, District of Columbia.

JANUARY TERM, 1924.

No. 4057.

DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

SUE H. GARDNER, DEFENDANT IN ERROR.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.

BRIEF OF THE PLAINTIFF IN ERROR.

Statement of the Case.

This case involves the right of the defendant in error to recover certain claimed balances of salary due her as a teacher in the public high schools of the District of Columbia. The defendant in error is employed as a teacher in the high schools of the District of Columbia and has been so

employed continuously since the 4th day of November, 1918, and on the 1st day of February, 1923, filed her suit in the Municipal Court of the District of Columbia, wherein she as plaintiff sued the plaintiff in error, named in said suit as defendant, for the sum of four hundred and nineteen dollars (\$419.00) and interest thereon, being the total of said alleged balances for the period beginning November 4, 1918, and ending December 30, 1922. The declaration in said cause consisted of the common or money counts, to which declaration was attached particulars of demand setting forth in detail the date of accrument of said alleged balances of salary and to which declaration was also attached an affidavit of merit under rule 16 of the Municipal Court of the District of Columbia, which affidavit set forth that on the 3d day of November, 1918, and prior thereto, plaintiff was and had been a teacher classified in class 4 of the salary classes for teachers in the Public School System of the District of Columbia, in accordance with and as salaries of such teachers are classified by virtue of a provision of an act of Congress entitled "An act to fix and regulate the salaries of teachers," etc., approved June 20, 1906, and amendments thereto and that as a teacher so classified she received an annual salary payable in ten monthly installments and totaling \$1,010.00, being a basic salary of \$100 plus seven annual increases of \$30 per annum; that on the 4th day of November, 1918, having previously qualified therefor, she was promoted to the position of high school teacher in said public school system, which said promotion removed her from class 4 of said salary group as defined in the act of Congress aforesaid and placed her in the salary group designated "class 6, group A," in which salary class she has remained continuously and has

continuously taught in the high schools of said public school system since November 4, 1918; that upon her promotion and classification aforesaid she did not receive and was not paid the longevity increment or placement of \$100 per annum fixed by the act of Congress aforesaid, as the annual placement or longevity increment to be paid teachers of class 6, group A, and that she received no such longevity or placement pay until the year beginning November 4, 1919, when she was paid a placement in the amount of \$100 per annum, which said placement was thereafter paid to her down to and including the date of the filing of this suit and increased annually after said last-mentioned date in the amount of \$100 per annum, it being alleged by plaintiff in said Municipal Court cause that she should have received for the period beginning November 4, 1918, and ending June 30, 1919 (the end of the school year), and for the period beginning July 1, 1919, and ending November 3, 1919, placement in the amount of \$100 for each of said periods, and that beginning November 4, 1919, and until June 30, 1920 (the end of the school year), she should have received a placement of \$200 per annum instead of the amount of \$100 paid her for said last-mentioned period, and that beginning July 1, 1920, and down to the date of the filing of her said action she was annually paid a placement or longevity increase amounting to \$100 per annum less than that to which she was entitled as said high school teacher by virtue of the terms and provisions of the act of Congress aforesaid, and that there was due and owing to her in all the sum of \$419.00 on account of said alleged deficits.

2. The plaintiff in error herein pleaded *nil debit* and *non assumpsit* to said declaration and annexed to its pleas its

affidavit of defense, in which said affidavit it was admitted that the said Sue H. Gardner was a teacher in the public school system of the District of Columbia and had been promoted and had rendered the teaching service all as alleged by her in her affidavit of merit, and that she as a high school teacher was paid the various items of salary as in said affidavit of merit and particulars of demand set forth, and that said payments were in full of all just claims and demands of said plaintiff against the District of Columbia for services rendered by her for the reason that under the terms and provisions of section 6 of the said act of Congress plaintiff was not entitled to and did not receive any placement or longevity increment of salary for the period beginning November 4, 1919, for the reason that the plaintiff had been promoted from the graded schools to the high school and had had, up to and including the date of her appointment as a high school teacher (November 4, 1918), no experience whatsoever as a teacher in the high schools, and therefore was not entitled to placement or longevity increase until the expiration of one year's service as such high school teacher, and that her teaching experience in the graded schools prior to her promotion to the high school was not such teaching experience as, under the provisions of existing law, entitled her to have and receive credit therefor to the extent of entitling her to the longevity increment or placement of high school teacher for the period beginning on the date of her appointment or promotion to the salary group of high school teachers, being class 6, group A.

3. The defendant in error moved in the Municipal Court for judgment for want of sufficient affidavit of defense, which motion was argued in due course and granted, to which rul-

ing of the court the plaintiff in error herein noted its exception and gave notice of its intention to apply to the Court of Appeals of the District of Columbia for writ of error, which writ was duly allowed by this Court on the 13th day of August, 1923.

ARGUMENT.

The question involved here is purely one of the interpretation of various statutes, hereinafter referred to, dealing with the matter of the pay of public school teachers in the District of Columbia. It is submitted that the judgment entered in the Municipal Court in favor of the defendant in error was and is erroneous and contrary to law, for that under the terms and provisions of section 6 of the act of Congress approved June 20, 1906, which said section is in the words and language following:

“SEC. 6. That the board of education shall arrange all teachers in the classes and groups in the above schedule, except as hereinafter specified.

“For the year ending June thirtieth, nineteen hundred and seven, each head of department and teacher shall receive the salary in his class next above his present salary, and no teacher or principal shall in any event receive less than his or her present salary. If promoted to a higher class he shall receive the salary in that class next above his present salary, and after June thirtieth, nineteen hundred and seven, if his work is satisfactory, he shall receive an annual increase within his class or group, as herein provided, without action of the board of education; but no teacher shall in any one year receive more than one promotion within his class or group: *Provided*, That if the salary in his class next above his

present salary shall be less than twenty-five dollars in excess of his present salary he shall receive the next higher salary, so that no teacher shall receive for the first year an increase of less than twenty-five dollars."

a teacher in the public school system of the District of Columbia promoted from any graded school salary class to the high school salary class is not entitled to receive any longevity increment whatsoever for the first year of her service in said high school, nor is she entitled to receive for said first year of service any greater basic salary than that fixed by the law as the basic salary of high school teachers of the group to which said graded school teacher is promoted, as said act of 1906 contemplates and establishes a differentiation between the graded school teachers and the high school teachers of said public school system, and that the longevity increment or placement salary paid to any teacher in the public school system is based upon previous experience had by said teacher in teaching in the graded schools or the high schools, as the case may be, but that experience as a graded school teacher is not recognized by said act of Congress as such teaching experience as to entitle a graded school teacher promoted to the high school to receive longevity increment or placement salary on the basis thereof.

That Section 6 of the act of Congress approved June 20, 1906, further provides as follows:

"No teacher, head of department, principal, or supervising principal shall be appointed to any position in the graded schools, high schools, manual training schools, or normal schools, and no director, assistant director, or teacher of special studies shall be appointed until he shall have passed an examination

prescribed by the board of examiners. No person without a degree from an accredited college, or a graduation certificate from an accredited normal school, such normal-school graduate to have had at least five years of experience as a teacher in a high school, shall hereafter be appointed to teach any academic or scientific subjects in the normal, high, and manual training schools. This provision for examination shall not apply to teachers coming from the normal schools, or teachers being advanced from the different classes in the grade schools: *Provided*, That no teacher or officer in the service of the public schools of the District of Columbia at the time of the passage of this act shall, by the operation of this act, be required to take any examination, either mental or physical, to be continued in the service. The board of examiners for carrying out the above provisions with reference to examinations shall consist of the superintendent and two heads of departments of the white schools for the white teachers and of the superintendent and two heads of departments of the colored schools for colored teachers. The designation of such heads of departments for membership on these boards to be made by the board of education annually."

which provision, we claim, points out the classifications for high school teachers, and that while teachers coming from the normal schools or teachers being advanced from the different classes in the graded schools are by said provision of law exempted from the examination required of those coming from elsewhere, there is nothing in said provision of law entitling such normal school or graded school teachers so advanced to longevity increment for the first year of service; but that on the contrary the following language occurring

further on in the same section of the act of Congress clearly indicates that all teachers advanced from the graded schools to the high schools shall, for the first year of such service, (in group A, class 6) be probationary appointees:

“Every new teacher at the time of his appointment shall be assigned to a class or group by the board of education on the recommendation of the superintendent of schools, and shall receive for the first year the minimum pay of said class or group. The first year in group A, class six, shall be probationary.”

That the following amendments also are clearly indicative of the contention of the plaintiff in error to the effect that the longevity increment or placement salary to be paid teachers in group A, class 6, is paid to them only upon the theory of previous high school teaching as distinguished from graded school teaching or teaching specialized subjects amounting to less than high school experience.

“That teachers hereafter employed in the normal, high, and manual training schools, may be placed in group A, class six, and receive their longevity increase according to their number of years of experience in teaching in accredited normal, high, or manual training schools. (Act of May 26, 1908.)

“That teachers now employed in group A, class six, in the normal, high, and manual training schools, or hereafter to be appointed in the said normal, high, or manual training schools, may be placed in said group A, class six, and receive their longevity increase according to their previous number of years of experience in teaching in accredited normal, high, or manual training schools: *Provided, however, That* nothing contained herein or in the act approved June

twentieth, nineteen hundred and six, shall be construed to authorize the promotion or appointment to group A, class six, of teachers of manual training, drawing, physical culture, music, domestic science, and domestic art in the normal, high, and manual training schools, and those who have not passed the required examination and do not possess the qualifications provided in the said act: *And provided further*, That teachers of manual training, drawing, physical culture, music, domestic science, and domestic art in the normal, high, and manual training schools shall continue in classes four and five, and be entitled only to the longevity pay provided for in said classes. (Act of May 18, 1910.)

“That all teachers of manual training, drawing, domestic science, domestic art, music, and physical culture in the normal, high, and manual-training high schools now in the service of the public schools and hereafter to be appointed shall be placed in class six, group A: *Provided further*, That no such teacher shall receive a salary less than that received at the time of the passage of this act: *Provided further*, That hereafter no teacher of any of these subjects shall be appointed without like qualifications to those required of teachers of academic and scientific subjects in the high schools, and that teachers of these subjects now in the service of the public schools and those hereafter to be appointed shall receive their longevity increase according to their previous number of years of experience in teaching in accredited normal, high, and manual training schools. (Act of June 26, 1912.)

There is no dispute in this case as to the mathematical accuracy of the figures of the claim of the defendant in error,

the only question before this Court and before the Municipal Court being one of law as heretofore set forth; and it is respectfully submitted that the determination of that question by the Municipal Court in favor of the defendant in error was erroneous.

Respectfully submitted,

FRANCIS H. STEPHENS,
ROBERT L. WILLIAMS,
Attorneys for Plaintiff in Error.

(1576)

FOR MR. JUSTICE VAN ORSDOL

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

MAR 3 - 1924

Henry H. Hodges
CLERK

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1924.

No. 4057.

DISTRICT OF COLUMBIA,
PLAINTIFF IN ERROR,

vs.

SUE H. GARDNER, DEFENDANT IN ERROR.

IN ERROR TO THE MUNICIPAL COURT OF THE
DISTRICT OF COLUMBIA.

BRIEF FOR DEFENDANT IN ERROR.

PAUL E. LESH,
Attorney for Defendant in Error.

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Statement.

The statement of facts contained in the brief for the plaintiff in error is very fair and needs little supplement to lay the facts of the case fully before the court. In fact, it is believed that little explanation is needed to make plain the brief record on appeal.

A fact shown by the record not noted in the statement of the plaintiff in error is, however, the minute of the action taken by the Board of Education with

regard to the plaintiff, defendant in error, effective November 4, 1918, as follows (Rec., p. 6):

“Promote S. H. Gardner, teacher Class 4, ungraded at Blake School, to be teacher class 6-a, Western High School, November 4.”

The significance to defendant in error of this minute lies in the word “promote.” The affidavit of merit filed on behalf of the plaintiff below described her change from the position of teacher in the grades, salary class 4, to the position of teacher in the high school, salary class 6, as a promotion. The affidavit of defense is careful to refer to this transaction as an appointment.

Briefly stated, the question involved, as we see it, is whether a proper construction of the statutes relating to salaries in public schools requires that a teacher who has been serving in the graded schools who has by years of service become entitled to the sum of one thousand and ten dollars per annum, and has qualified herself as a teacher in the high schools, and has been promoted to teacher in the high schools, must accept a demotion in salary in order to take the position to which she has been promoted.

The difference in salary in the present case is not large.

Though it is not shown by the printed record, we draw upon the plaintiff in error's petition for a writ of error filed in this court for the following statement:

“Petitioner further shows to the court that while the amount involved in this proceeding is but \$419.00, this case is one of thirteen involving precisely the same question and was selected as a test case, the ruling herein to govern the other twelve; and that the total amount claimed in these cases is approximately \$5,000.00 and is therefore a matter of considerable moment to

both the petitioner herein and the several plaintiffs in the Municipal Court suits now pending and awaiting final determination of this question."

In one of these other cases so referred to the salary which the graded school teacher was receiving before promotion was over thirteen hundred dollars, and the salary paid her after promotion, upon the statutory construction which the accounting office has forced upon the defendant, is one thousand dollars.

Argument.

Those portions of the school statute which are directly involved are the following, from Section 6 of the act approved June 20, 1906, 34 Stats., 319:

"Sec. 6. That the board of education shall arrange all teachers in the classes and groups in the above schedule, except as hereinafter specified.

"For the year ending June thirtieth, nineteen hundred and seven, each head of department and teacher shall receive the salary in his class next above his present salary, and no teacher or principal shall in any event receive less than his or her present salary. If promoted to a higher class he shall receive the salary in that class next above his present salary, and after June thirtieth, nineteen hundred and seven, if his work is satisfactory, he shall receive an annual increase within his class or group, as herein provided, without action of the board of education; but no teacher shall in any one year receive more than one promotion within his class or group: *Provided*, That if the salary in his class next above his present salary shall be less than twenty-five dollars in excess of his present salary he shall receive the next higher salary, so that no teacher shall receive for the first year an increase of less than twenty-five dollars.

"A teacher shall not be promoted from one class to another, except by the board of education, upon the recommendation of the officer having direct supervision of said teacher and in the case of colored teachers upon the additional recommendation of the colored assistant superintendent. Such recommendations shall in each case be made through and with the approval of the superintendent of schools."

.

"Every new teacher at the time of his appointment shall be assigned to a class or group by the board of education on the recommendation of the superintendent of schools, and shall receive for the first year the minimum pay of said class or group. The first year in Group A, class six, shall be probationary."

The provision of this statute which we think controls the present case is the following:

{ "If promoted to a higher class he shall receive the salary in that class next above his present salary." }

The present salary which the defendant in error had at the time she was promoted was \$1,010 per annum. She was in salary class four. She was promoted to salary class six. The salary in that class (class six) next above \$1,010 was \$1,100.

The court will recall that the several salaries in the several classes were set out in the act of June 20, 1906, in section 4 thereof, in a tabulation, as follows:

TEACHERS.

Class 1.	Class 2.	Class 3.	Class 4.	Class 5.	Class 6.
\$500	\$600	\$650	\$800	\$950	\$1,000
525	625	675	830	990	1,000
550	650	700	860	1,030	1,100
575	675	725	890	1,070	1,200
600	700	750	920	1,110	1,300
		775	950	1,150	1,400
		800	980	1,190	1,500
		825	1,010	1,230	1,600
		850	1,040	1,270	1,700
		875	1,070	1,310	1,800
		900	1,100	1,350	
					1,900
					2,000
					2,100
					2,200

Group A

Group B

Looking at the column marked "Class 4" in this tabulation, the court will see the figures showing the seven promotions in salary the defendant in error had received in class four, making her salary \$1,010; and looking at the column marked "Class 6" the court will see that the salary in that class, to which the appellee was promoted, next above \$1,010, was \$1,100.

The provision fixing the salaries of promoted teachers is of general application and is not limited to the fiscal year 1907.

In disallowing the claim of the defendant in error, the Auditor of the District based his decision on the ground that the provision that we have quoted is to be construed as applying to the adjustment of salaries for the year ending June 30, 1907, and therefore was not

applicable to a promotion which occurred November 4, 1918.

It is, of course, quite apparent that some provisions of section 6 of the act do expressly refer to the year ending June 30, 1907. If, however, this paragraph and the other context of the clause upon which we rely, is carefully analyzed, one must come to the conclusion that provisions of section six, including this provision, were intended to apply not only to the year ending June 30, 1907, but also to the subsequent years during which the act might be in effect. There is in this particular paragraph a very close commingling of provisions applicable only to that year and provisions which are generally applicable in the future.

Thus, the first sentence of section six, which is itself a short paragraph, is applicable and controlling so long as the statute remains in force.

The first sentence of the second paragraph seems applicable to the year ending June 30, 1907, exclusively. The second sentence, the one which includes the provision upon which we rely, clearly related to the future as well as to the then present year; it expressly provides for annual increases within classes and groups; and it provides against more than one promotion "in any one year," which proviso modifies the clause upon which we rely. The sentence immediately following, which begins a new paragraph, states the conditions under which a teacher may be promoted from one class to another, and provides the only rule applicable at the present day to this subject matter. And so on throughout the section enactments by way of permanent legislation are made.

The consideration, however, which compels a conclusion that this provision relied upon (for promotion from class to class) is applicable to the future as well as to the year ending June 30, 1907, is the fact that nowhere

else in the entire statute is there a provision made as to what salary shall be paid to a teacher promoted from class to class.

There is elsewhere in this section a provision for the assignment to a salary class of new teachers, that is, persons newly appointed as teachers in our public school system. This provision is the last paragraph of those portions of the act first above quoted.

The provision upon which we rely and the provision last above referred to, when read together, cover the entire legislative scheme for the assignment of teachers to salaries, upon their entrance into new salary classes.

After a teacher has served in a salary class his future salary in that class is controlled by the provision "if his work is satisfactory, he shall receive an annual increase within his class or group, as herein provided, without action of the Board of Education."

Upon the entrance of a teacher into a salary class, however, there are but two provisions in the statute which govern his placement, the one relating to newly appointed teachers (the last paragraph of the portion of the statute above quoted), and the one fixing the salary of a teacher promoted from class to class (the one upon which we rely).

Further supporting our conclusion that the provision upon which we rely relates not only to teachers in the system at the time of the passage of the act and to their placement during the year ending June 30, 1907, but also to teachers promoted in future years, we call attention to the provision, "he shall receive an annual increase within his class or group." This provision is in the very sentence upon which we rely. It is the only provision in the entire statute which governs the annual increase of salaries without action of the Board of Education within a class or group. To whom does the

“he” in this section relate? For convenience, we repeat the context:

“If promoted to a higher class he shall receive the salary in that class next above his present salary, and after June thirtieth, nineteen hundred and seven, if his work is satisfactory, he shall receive an annual increase within his class or group, as herein provided, without action of the Board of Education;”

The person referred to by the pronoun, “he,” who “shall receive an annual increase,” is certainly the same person referred to by the same pronoun who “shall receive the salary in that class next above his present salary.” It has always been assumed and is unquestionably conceded by the plaintiff in error that the provision making annual automatic increases for satisfactory work is applicable to all teachers who shall be employed in the system and not only to those who were in the system at the time of the passage of the act of June 20, 1906. Yet, the mode and conditions under which these increases are granted, that is, for satisfactory work and without action of the Board of Education, are to be found only in the sentence with which we are concerned, and the words used are literally applicable only to the same person (“he”), who it is provided shall receive the salary in that class next above his present salary, the provision upon which we rely.

The court may have noticed that the contention we have been considering is not made in the brief for the plaintiff in error. It appears only in the rulings of the Auditor upon which the disallowance was based, which, of course, are not reproduced in the record. We, therefore, would not refer to it at all were it not for the fact that it is the objection to our contention which would most readily occur upon the first reading of the statute.

Counsel for the District of Columbia were doubtless compelled to abandon the contention that the provision relied upon was to be applied only for the year ending June 30, 1907, because they found it hopelessly inconsistent with the rulings of the Comptroller which had been informally acted upon in the construction of this statute from the beginning.

We refer to the fact that the Comptroller has ruled that the provision upon which we rely does govern all promotions from salary class one to two, two to three, and so on to class five, that is, to all promotions of teachers from the kindergarten to the grades and from the lower grades to the higher grades. Thus, referring again to the tabulation on page 5 of this brief, if, for instance, a teacher has by reason of a five years' service in class two attained the salary of \$700 and is promoted to class three, she is given in class three the salary next above her present salary at the time of her promotion, and is given an entering salary in class three of \$725 a year, not \$650, the minimum of that class.

This is called a longevity "placement," as distinguished from a salary attained by annual increases within a class.

Such longevity placement in a class to which promoted is granted pursuant exclusively to that provision in the statute upon which we now rely. Obviously, if that provision referred only to the year ending June 30, 1907, there would be no statutory basis for such a longevity placement.

Counsel for the plaintiff in error, therefore, quite properly, we think, make no claim, so far as we can discover from their brief, that the Auditor is correct in saying that the provision upon which we rely applied only to the single year referred to.

The conclusions of the Comptroller which have been uniformly followed in these later rulings of the account-

ing officers were first expressed in his decision of August 27, 1907 (14 Decisions of the Comptroller of the Treasury, 92, 96), as follows:

"If promotions are made from grade to grade only, there will be no increase of salary by reason of promotions from the first to the second grade or from the third to the fourth, the fifth to the sixth, or the sixth to the seventh.

"On promotion from the second to the third grade, or from the fourth to the fifth, or the seventh to the eighth, the teacher would by operation of law be advanced to the next higher class. Where a teacher is so advanced, if he is required to enter the higher class at the minimum salary of that class, his salary will be reduced. It is provided in section 6, for the fiscal year 1907, that if promoted to a higher class, a head of department or teacher shall receive the salary in that class next above his salary in the lower class. While this provision is, in terms, confined to the fiscal year 1907, it represents the view Congress took of this question in the case it was acting upon, and I think this method should be followed in cases arising in subsequent years. The above provision, however, had reference to the increase of salary for the school year 1906-7, which appears to be provided for in the salary indicated, no other increase being provided for for that year. It therefore appears that it was not intended that a head of department or teacher who had been promoted should receive the salary in the higher class next above his salary in the lower class, and also the annual increase for length of service in addition thereto. I think, therefore, that under this provision, where a head of department or teacher had been promoted prior to the beginning of the school year 1906-7, he was entitled to receive a salary which, together with increase for length of service in the class to which promoted, would equal 'the salary in that class next above' the salary he was receiving in the lower class."

The provision fixing the salaries of promoted teachers applies to promotions to class six.

Being confronted with this uniform and reasonable construction of the portion of the act upon which we rely, counsel for the District of Columbia were necessarily compelled to make a distinction between promotions from class one to class five, on the one hand, and promotions from any of those classes to class six, on the other hand, that is, a distinction between promotions to positions lower than the high schools and to positions in the high schools.

They point out those provisions of the original statute and those provisions of the amending statutes which establish that there is a differentiation between the graded school teachers and the high school teachers of the public school system.

We may concede that there is such a differentiation. We may concede that before a teacher can be promoted to the high schools from the graded schools additional and different requirements must be met and additional and different qualifications shown by the teacher. But the teachers of the group with which we are concerned have met those requirements and fulfilled those qualifications. They were entitled to be and were promoted from lower salaried classes to salary class six. If they were seeking promotion without having fulfilled the additional requirements, the observations of counsel for the plaintiff in error would be more apt.

Counsel for the plaintiff in error have failed, however, in our opinion, to point out any words or intent in the statute relating to promotions from class to class and having to do with the salary to be paid in the class to which promoted, upon which may be founded a distinction between promotions from class one to class five, on the one hand, and promotions to class six, on the other hand.

As we understand their argument it is to the effect that, inasmuch as the increased salary is in consideration of increased value of service due to years of service in the same position, a graded school teacher with no experience in the high schools should receive no salary larger than the minimum provided for high school teachers.

There are two answers to their argument.

One answer is, that, if it is sound, it should have been addressed to Congress when the statute was enacted and Congress should have been persuaded to make the provision read "if promoted to a higher class, *excepting upon promotions from classes lower than class six to class six*, he shall receive the salary in that class next above his present salary."

The other answer is that counsel are confusing annual or longevity increases which are granted pursuant to the statute automatically for continued service within a salaried class, on the one hand, with placement or allocation at an appropriate entrance salary, on the other hand. Thus, a teacher of five years' experience in the second grade would be classified in class two and would be receiving \$700 per year under the original statute; if she qualified herself to be a kindergarten principal and was promoted to that position, she would be promoted to salary class three and receive there an entering salary of \$725, not because she was an experienced kindergarten principal or had served as one for three years, but because she was promoted from a lower to a higher salary class, and the statutes provide that she shall receive the salary in that class next above her present salary, a transaction which is conveniently referred to as "placement" in her new salary class.

Similarly, we must concede that the eighth grade teacher receiving, by reason of years of experience, \$1,350 in class five and promoted to teaching in the

high schools, is not entitled to set up any claim, based upon experience in high school teaching, to a salary greater than the minimum of class six, but she is entitled to claim a placement in class six at the salary next above the salary from which she was promoted, which would be in the case put \$1,400.

The amendments of May 26, 1908, and May 18, 1910, which are quoted by counsel for the plaintiff in error in support of their contention, relate to teachers appointed to positions in the District of Columbia who have had experience in teaching in "accredited normal high or manual training schools." Prior to these amendments longevity pay was allowed only for previous service in the District of Columbia schools. Experienced and desirable high school teachers in other cities could be offered only the basic salary of class six. The court will recall that, after the act of May 26, 1908, was passed, a question arose upon it due to the fact that it was limited in its terms to teachers "hereafter employed." The case of *District of Columbia vs. Martin*, 34 Appeals D. C., 265, turned upon the question whether Miss Martin was in the words of the act of May 26, 1908, "hereafter employed," in view of the fact that her original or probationary appointment had been prior to the passage of the act. Miss Martin had had nine years' experience in teaching accredited normal and high schools prior to her appointment in the District of Columbia. The case was decided by this court on January 4, 1910, and in the meantime the injustice of making a differentiation between teachers appointed before and after the passage of a particular act must have become apparent, and for this reason and to clarify the prior amendment in respect of teachers in special subjects, such as domestic science, the act of May 18, 1910, was passed and made in terms applicable to teachers "now employed" or "hereafter to be

appointed." The other amendment quoted by plaintiff in error, that of June 26, 1912, relates exclusively to teachers of such special subjects as domestic science. None of these amendments purport to change the organic law of 1906 with regard to placement in salary upon promotion from class to class.

The citation of these amendments by plaintiff in error supports its point that Congress has seen fit to make some provisions concerning high school teachers different from those made for the graded school teachers; that among those differences is that a teacher, appointed to a position in our high schools who has, prior to his appointment, taught in other accredited high schools, is entitled to receive a longevity placement based upon his prior experience in high schools; whereas a teacher appointed in our graded schools who has had experience in graded schools elsewhere receives no credit or longevity placement for such experience. We might conjecture that the reason for this distinction is that graded schools are not as well standarized, nor could it be well determined what was an "accredited" graded school.

But, whatever may be the reason for the distinction, we fail to see that the fact that Congress has made such a distinction has any bearing upon the question with which we are concerned in the present case, viz.: the promotion from class to class within our own system; as to which Congress has seen fit to make no distinction between a promotion from class four to class five, on the one hand, and promotion from class five to class six, on the other hand.

No consideration arising upon these amendments justifies the distinction the plaintiff in error would have the court make, to the effect that although a teacher in class four promoted to class five would be placed at a salary in class five in accordance with the provision

upon which we rely, a teacher in class four promoted to class six would be placed at the basic salary of class six in accordance with the provision made in the statute for newly appointed teachers.

Conclusion.

In every salary case such as this one a treatise of considerable length would be required to support the position of the claimant for salary as against every possible question which would arise upon it if the statute had not already received judicial and unquestioned executive construction. Thus, in the present case, we assume that the court will not (at least not without directing counsel's attention to any such question as may occur to the court) question a number of propositions upon which the claim depends but which are not in controversy here. Among such propositions are these: (a) That in class six the first annual increase over the entrance salary, (whether that entrance salary be the basic or the basic plus longevity placement) is due at the end of the probationary year; for the court will note that an increase was then paid, and the claim for the second year arises only because the increase was added to an entrance salary lower than the one claimed. (Rec., p. 2.) (b) That the probationary year is calculated as a full calendar year, and therefore the first annual increase was due one calendar year after entrance into the salary class, and the second increase at the beginning of the following school year, for the court will note that the accounting officers followed this method of annual increase in making their payments. (c) That the fact that the first year in class six is probationary, presents no objection to the payment of more than the basic salary that year, for not only is that the executive practice but such an objection would have defeated the recovery in *District of Columbia vs.*

Marsh, 47 App. D. C., 59, which arose when the first year in Class Six was probationary just as it was when defendant in error was promoted to that class. (d) That the several amendments to the salary schedule accomplish the increases in the basic salary, and justify the claims for bonus, for this appears to be conceded by the payments actually made. These and similar questions are perhaps eliminated by the brief of plaintiff in error, wherein the question actually in litigation is stated.

Therefore, without a discussion of questions other than those raised by the defense interposed on behalf of the District of Columbia, and for the reasons above given, it is respectfully submitted that the decision of the court below is a correct interpretation of the statutes fixing the salary due the defendant in error, and should be affirmed.

PAUL E. LESH,
Attorney for Defendant in Error.

Page 1

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